Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 2.106 of the	)	
Commission's Rules to Allocate	)	ET Docket No. 95-18
Spectrum at 2 GHz for Use	)	
by the Mobile-Satellite Service	)	

To: The Commission

PETITION OF ENRON NORTH AMERICA CORP.
FOR PARTIAL RECONSIDERATION OR CLARIFICATION

Enron North America Corp. (the "Petitioner" or "Enron"), pursuant to Section 1.429 of Commission's Rules, 47 C.F.R. § 1.429, hereby files this Petition for Partial Reconsideration or Clarification (the "Petition") of the *Second Report and Order and Second Memorandum and Order* ("*Second Report and Order*")[1] in the above-captioned proceeding regarding certain aspects of the new rules governing the relocation of terrestrial fixed service ("FS") microwave licensees in the 2110-2150 MHz and 2165-2200 MHz bands ("2 GHz Band"). Enron is aware of, and supports, the Joint Petition for Clarification and Reconsideration ("Joint Petition") of the Critical Infrastructure Communications Coalition ("CICC"),[2] Fixed Wireless Communications Coalition

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[1] ET Docket No. 95-18, *Second Report and Order and Second Memorandum Opinion and Order*, FCC 00-233, 65 Fed. Reg. 48174 (Aug. 7, 2000).

[2] The CICC represents industries that operate telecommunications systems to maintain and protect the nation's critical infrastructure, and includes representatives of the electric, gas, water, railroad and petroleum industries including: American Gas

("FWCC"), Association of Public Safety-Communications Officers, International ("APCO), Association of American Railroads ("AAR"), American Petroleum Institute ("API"), and the United Telecom Council ("UTC") (collectively the "Joint Petitioners"), that is being filed separately in this proceeding.[3] This Petition addresses a key aspect of the new relocation rules in need of clarification or reconsideration as it specifically impacts Enron as a 2 GHz FS incumbent, *i.e.*, the elimination of incentives for 2 GHz MSS licensees to avoid relocations until after the sunset.

I. Standing and Interest of the Petitioner.

Enron is a leading provider of energy products and services with more than $30 billion in combined assets through its parent corporation and affiliates. Enron's core business activities, among other things, include the buying, selling, transporting and storage of natural gas, crude oil and natural gas liquids. In this regard, some of Enron's natural gas pipeline affiliates, including Houston Pipe Line Company ("HPL"), are licensed by the FCC to operate private fixed point-to-point wireless communications

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Association, American Petroleum Institute, American Public Power Association, American Water Works Association, Association of American Railroads, Association of Oil Pipe Lines, Edison Electric Institute, Interstate Natural Gas Association of America, National Association of Water Companies, and United Telecom Council.

[3] In addition to the issue addressed in this Petition, Enron supports the following requests in the Joint Petition: (1) the mandatory negotiation period should commence with the initiation of relocation negotiations between MSS and FS licensees, and not at the earlier date of the initiation of negotiations between FS licensees and "the first emerging technology licensee"; (2) the mandatory negotiation period should commence with the issuance of an FCC Public Notice; (3) the costs of relocating incumbents from the 2165-2200 MHz band should be shared among MSS licensees; (4) that self-relocating incumbents in the 2165-2200 MHz band can participate in the cost-sharing plan; and (5) incumbents should not lose primary status by assigning or transferring control of their licenses.

facilities in the 2 GHz Band.[4] These communications facilities are utilized to control and ensure the safe operation of its pipelines and related facilities.

Previously, HPL was an incumbent licensee of private fixed wireless communications facilities in the 1850 to 1990 MHz band, which were subject to relocation for personal communications services ("PCS") pursuant to the rules adopted in the *Emerging Technologies Proceeding*.[5] HPL's experience in successfully concluding its PCS relocation negotiations during the voluntary negotiation period was the direct result of relocation rules that were carefully crafted by the Commission to ensure adequate bargaining power for incumbents during the negotiations. While Enron would prefer not to be forced to relocate any of its licensed communications facilities, Enron's PCS relocation experience teaches the importance of the relocation rules. Accordingly, Enron seeks the correction or clarification of certain ambiguities or shortcomings in the new relocation rules, which may prevent incumbents from being made whole during the 2 GHz MSS microwave relocation.

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[4] HPL is licensed to operate approximately 21 microwave paths in the 2 GHz Band.

[5] *See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (Emerging Technologies)*, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rule Making*, 7 FCC Rcd 6886 (1992); *Second Report and Order*, 8 FCC Rcd 6495 (1993); *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993); *Memorandum Opinion and Order*, 9 FCC Rcd 1943 (1994); *Second Memorandum Opinion and Order*, 9 FCC Rcd 7797 (1994), *aff'd sub nom., Association of Public Safety Communications Officials-International, Inc. v. FCC*, 76 F.3d 395 (D.C. Cir. 1996).

II. Incumbents Should be Relocated With Compensation Whenever Inter-Service Interference Will Occur.

In order to achieve relatively positive relocation outcomes for Enron and other FS incumbents in the 2 GHz Band – consistent with the Commission's underlying policy objective of making incumbents whole for their loss of the frequencies and the resulting expenses -- the new rules should at a minimum obligate 2 GHz MSS licensees to relocate FS incumbents in the 2 GHz band whenever MSS licensees would create interference to, or receive interference from, incumbent microwave operations. Telecommunications Industry Association ("TIA") protocol TSB-86 has been adopted by the Commission as the sole technical standard for assessing potential interference from MSS licensees to FS licensees.[6] However, as explained in greater detail in the Joint Petition, TSB-86 does not adequately address the potential for interference between FS and MSS because, although TSB-86 provides a basis upon which to predict interference to incumbent FS operations from MSS, it does not address interference from FS to MSS, and is not intended to assess the potential for MSS and FS to "co-exist" in the same spectrum.[7]

If the past is prologue, the new 2 GHz MSS licensees will seek to minimize any initial relocation obligations to FS incumbents in the start-up phase of their operations. Such was the case in the negotiations between PCS licensees and FS incumbents. There is no reason to believe it would be different in the MSS context.

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[6] *Second Report and Order* at ¶ 78.

[7] TIA/EIA Telecommunications Systems Bulletin: *Criteria and Methodology to Assess Interference Between Systems in the Fixed Service and the Mobile-Satellite Service in the Band 2165-2200 MHz,* at iv. (October 1999) ("TSB-86").

PCS licensees sought to relocate initially only the barest few FS facilities in order to deploy a basic PCS system with limited coverage in order to quickly commence service to the public. In time, PCS licensees planned to relocate other FS facilities, but not until the PCS market sufficiently developed. From the incumbent's perspective, this phenomenon was akin to "cherry picking," relocating isolated portions of a communications system in a piecemeal fashion without any regard to the disruption and adverse impacts on the incumbent's safety objectives and ongoing operations. However, in the PCS context, where FS facilities would interfere with PCS operations, comprehensive relocations of contiguous microwave links occurred. In some instances such relocations were deferred by mutual agreement of the parties until a later time in the transition -- before the Sunset. This type of outcome should be encouraged by the Commission, and was possible only because the parties to the negotiations took account of both sides of the inter-service interference equation (PCS-to-microwave interference and microwave-to-PCS interference).

Essentially, due to the new rules' reliance solely on TSB-86, the new rules require MSS licensees to negotiate for the relocation of only a subset of FS incumbents' facilities in the 2 GHz Band in the initial deployment phase. This subset may not include many FS facilities in the 2 GHz Band that will interfere with MSS handheld units. In fact, only half of the inter-service interference equation (MSS-to-FS) is considered under the new rules during the limited 2-year mandatory negotiation period. Beyond that point in time, there are no assurances in the new rules that MSS licensees will relocate FS

facilities that cause interference to handheld units in some parts of the MSS service area.[8] Indeed, MSS licensees have an incentive under the rules to defer such relocations until after the sunset.

At the end of the transition, the new rules effectively reward MSS licensees who have avoided relocating FS incumbents. During the sunset period, FS microwave licensees will be required to relocate their facilities in other bands at their own expense within six months of the presentation of a written demand by an MSS licensee entitled to use the spectrum that "will receive harmful interference according to TIA TSB-86, or that has received actual harmful interference from the FS microwave licensee."[9] Hence, the MSS licensees avoid the payment of relocation compensation to FS incumbents.

This undesirable result would be contrary to the spirit of the Commission's relocation policies adopted in the *Emerging Technologies Proceeding*. If those policies can be summarized singularly, they stand for the following proposition: incumbents forced to relocate to another band should be compensated for the costs of relocation. Accordingly, to avoid the undesirable outcome described above, the Commission should make clear that 2 GHz MSS licensees must contact FS incumbents in the 2 GHz Band during or prior to the mandatory negotiation period to commence relocation negotiations whenever the FS incumbents will either receive interference from an MSS system, or cause interference to MSS handheld units. If, at the end of the transition, FS incumbents remain in the 2 GHz Band and have not been contacted by a 2 GHz MSS licensee to

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[8] As noted in the Joint Petition, interference from FS facilities to MSS handheld transceivers is likely to result.

[9] *Second Report and Order*, at ¶ 80.

commence negotiations for microwave facilities that cause interference to MSS system operations during the mandatory negotiation period, those FS facilities should remain licensed on a co-primary basis with the MSS systems operating in the 2 GHz Band.

III. Conclusion.

In addition to the other requests set forth in the Joint Petition, which Enron supports, Enron respectfully requests the Commission to clarify that FS incumbents who cause interference to MSS licensees are entitled to relocation compensation, even if the intefering facilities do not receive interference from MSS licensees,before the "sunsetting" of relocation reimbursement rights.

Respectfully submitted,

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